

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawaii 96813

December 8, 2006

Board of Land
and Natural Resources
Honolulu, Hawaii


REQUEST FOR APPROVAL TO HOLD PUBLIC MEETINGS AND HEARINGS TO
REPEAL HAWAII ADMINISTRATIVE RULES CHAPTERS 13-84 SAMOAN CRAB AND
13-92, OPIHI AND AMEND HAWAII ADMINISTRATIVE RULES CHAPTER 13-95 RULES
REGULATING THE TAKING AND SELLING OF CERTAIN MARINE RESOURCES TO
INCLUDE AMENDED RULES FOR THE TAKE OF OPIHI AND FOR THE TAKE OF
SPINY LOBSTER, KONA AND SAMOAN CRABS

Submitted for your consideration and approval is a request to hold public meetings and hearings to repeal and amend Hawaii Administrative Rules (HAR) to 1) repeal Chapter 13-84 Samoan Crab to transfer its provisions to Chapter 13-95, 2) repeal Chapter 13-92 Opihi to transfer its provisions to Chapter 13-95, 3) amend Chapter 13-95 to better manage the opihi, and 4) amend Chapter 13-95 to make the provisions consistent with Act 77, SLH 2006, which prohibited the taking of female Kona crab, Samoan crab, and Spiny lobsters.

RECOMMENDATION:

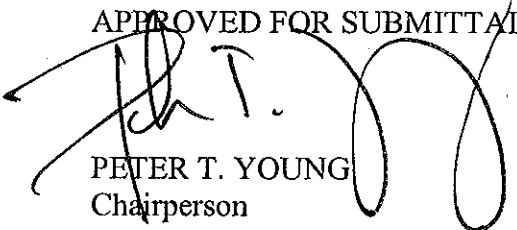
"That the Board approve the holding of public meetings and hearings to repeal Chapters 13-84 Samoan Crab and 13-92 Opihi and amend Chapter 13-95, Rules Regulating the Taking and Selling of Certain Marine Resources, Hawaii Administrative Rules."

Respectfully submitted,



DAN POLHEMUS
Administrator

APPROVED FOR SUBMITTAL:



PETER T. YOUNG
Chairperson

ITEM F-2

Repeal of Chapters 13-84 and 13-92 and
Amendments to Chapter 13-95,
Hawaii Administrative Rules

1. Chapter 13-84 is repealed.
2. Chapter 13-92 is repealed.
3. Section 13-95-1, Hawaii Administrative Rules, is amended by adding four new definitions to read as follows:

"Carapace" means a hard or chitinous outer covering enclosing the head and body of lobsters, crabs, and most other crustaceans.

"Carapace width" means the distance across the carapace as measured from edge to edge at its widest point.

"Opihi" means any mollusk, commonly called limpets, belonging to the genus *Cellana*, or any recognized synonym. Individual species within the genus include *Cellana talcosa*, also known as *ko'ele*, *Cellana sandwicensis*, also known as *alinalina*, *Cellana exarata*, also known as *maka-ia-uli*, and *Cellana melanostoma*.

"Samoan crab" means any crustacean known as *Scylla serrata* or any recognized synonym."

4. Section 13-95-51, Hawaii Administrative Rules, is amended by amending subsection (d) to read as follows:

"§13-95-51 Kona crab. ***

(d) It is unlawful for any person to take, possess, kill, or sell any female Kona crab [while with eggs. Any Kona crab with eggs caught must immediately be returned to the waters from which the crab was taken. The possession of any Kona crab, showing indications of the eggs having been scraped or removed therefrom, shall be prima facie evidence of the violation of this section.]" [Eff 12/03/98; am 12/19/02; am] (Auth: HRS

§187A-5) (Imp: HRS §§187A-5, 188-58.5)

5. Section 13-95-52, Hawaii Administrative Rules, is amended to read as follows:

"§13-95-52 Samoaan crab. (a) It is unlawful for any person to [catch or] take [from any bay, harbor, or other waters of the State], [or to expose] sell or offer for sale, [or to hold in possession with the intent of exposing or offering for sale,] possess, or [to] kill, any female samoan crab [while with eggs. Any samoan crab with eggs caught must immediately be returned to the waters from which the samoan crab was taken. The possession of any samoan crab, showing indications of the eggs having been scraped or removed therefrom, shall be prima facie evidence of the violation of this section].

(b) [No person shall] It is unlawful for any person to pursue, take, or kill any samoan crab in the State with a spear.

(c) [No person shall] It is unlawful for any person to sell or offer for sale any speared samoan crab.

(d) It is unlawful for any person to take, sell or offer for sale, possess, or kill any samoan crab with a carapace width of less than six inches (15.2 centimeters)." [Eff 12/3/98; am]
(Auth: HRS §187A-5) (Imp: HRS §§187A-5, 188-58.5)

6. Section 13-95-53, Hawaii Administrative Rules, is amended by amending subsection (c) to read as follows:

"§13-95-53 Spiny lobster. ***

(c) It is unlawful for any person to [catch or] take [from any bay, harbor, or other waters of the State,] sell or [to expose or] offer for sale, [or to hold in possession with the intent of exposing or offering for sale, or to] possess, or kill, any female spiny lobster [while with eggs. Any spiny lobster with eggs caught must immediately be returned to the waters from which the spiny lobster was taken. The possession of any spiny lobster, showing indications

of the eggs having been scraped or removed therefrom, shall be prima facie evidence of the violation of this section]." [Eff 12/3/98; am] (Auth: HRS §187A 5) (Imp: HRS §§187A-5, 188-58.5)

7. Chapter 13-95, Hawaii Administrative Rules, is amended by adding a new section 13-95-90 to read as follows:

"§13-95-90 Opihi. (a) It is unlawful for any person to:

- (1) Take, possess, sell, or offer for sale any opihi shell, with meat attached, less than one and three-fourth inches in diameter;
- (2) Take, possess, sell, or offer for sale any opihi meat, without the shell attached, less than three-fourth inch in diameter; or
- (3) Sell, or offer for sale any jewelry or other item made from an opihi shell less than one and three-fourth inches in diameter.

(b) It is unlawful for any person to possess more than one quart of opihi per person per day; provided that a marine dealer may possess, sell or offer for sale more than this limit with receipts that document the marine dealer:

- (1) Obtained not more than the per person limit of opihi from each person issued a valid commercial marine license; or
- (2) Obtained the opihi from another marine dealer.

(c) It is unlawful for any person to possess near or at the shoreline, on or in the ocean, or to sell or offer for sale, any opihi without the shell attached; provided that commercial food service providers may remove the meat from the shell when serving the opihi for immediate consumption.

(d) For the purposes of this section, the meat diameter shall be measured with the meat in its natural circular shape and the foot measured from edge to edge in this position at its widest width. The shell diameter shall be measured at its widest width."

[Eff 5/26/81; am and comp 9/16/89; am] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

8. Material, except source notes, to be repealed is bracketed. New material is underscored.

9. Additions to update source notes to reflect these amendments are not underscored.

10. The repeal of chapters 13-84 and 13-92, and amendments to chapter 13-95, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

PETER T. YOUNG, Chairperson
Board of Land and
Natural Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General